

D.P.U. 95-AD-12

Adjudicatory hearing in the matter of the complaint of Mary Miller protesting rates and charges for electricity provided by Boston Edison Company.

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APPEARANCES: Mary Miller  
14 Pleasant Circle  
Canton, Massachusetts 02021  
PRO SE  
Complainant

Jeffrey N. Stevens, Esq.  
800 Boylston Street  
Boston, Massachusetts 02199  
FOR: Boston Edison Company  
Respondent

## I. INTRODUCTION

On January 18, 1995, an informal hearing was held before the Consumer Division of the Department of Public Utilities ("Department") on the complaint of Mary Miller ("Complainant") relative to rates and charges for electricity sold by Boston Edison Company ("Company" or "Respondent"). The Complainant was dissatisfied with the informal hearing decision and requested an adjudicatory hearing before the Department pursuant to 220 C.M.R. § 25.02(4)(c). The matter was docketed as D.P.U. 95-AD-12.

Pursuant to notice duly issued, an adjudicatory hearing was held on July 25, 1995, at the Department's offices in Boston, in conformance with the Department's Regulations on Billing and Termination Procedures, 220 C.M.R. §§ 25.00 et seq. The Complainant testified on her own behalf. The Respondent sponsored the testimony of Margaret Coughlan, a customer relations representative for the Company. The evidentiary record consists of six exhibits, three by the Complainant and three by the Company.<sup>1</sup>

## II. SUMMARY OF ISSUE

The Complainant disputes the bills rendered to her account by the Company for electrical use between September 15, 1991 and April 19, 1994 (Tr. at 9-14). The Complainant has paid all her bills in full (Tr. at 40). The Complainant asserts that she should be given a refund of \$766.80 because the bills do not accurately reflect her actual electrical consumption (id.). The Company contends that the Complainant remains responsible for payment of all of her bills rendered

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<sup>1</sup> The Complainant requested the opportunity to provide additional documents not in her possession at the time of the hearing and was given one week to do so (Tr. at 7, 53). The request was identified for the record as RR-1. However, the Complainant was unable to locate the documents.

between September 15, 1991 and April 19, 1994, because the bills were based on actual reads, and because meter tests performed by the Company and the Commonwealth of Massachusetts on the customer's meter showed that the meter was working properly (id. at 6). The Company further contends that, according to Department precedent, a customer's impression of use is outweighed by accurate meter tests (id.). Therefore, the Company contends, it should not have to refund any portion of the Complainant's bills.

### III. SUMMARY OF FACTS

#### A. The Complainant

The Complainant stated that her electric service was activated on September 15, 1991 when she moved into a single-family house at 12 Davenport Avenue in Canton, Massachusetts (Exh. Complainant-3; Tr. at 10). She further stated that, following receipt of her first electric bill, she became suspicious that her bills did not accurately reflect her actual electrical consumption (Exhs. Complainant-1; Complainant-2; Complainant-3; Tr. at 10-15, 27). The Complainant explained that she lived alone in her home and that her appliances consisted of a microwave, a small refrigerator, a washer and dryer and an electric water heater (Tr. at 11, 16). She added that all of her electrical appliances were less than five years old and that her home had updated electric wiring (id. at 11). The Complainant also stated that she made a significant effort to conserve energy (id. at 12-13). She stated that, as a result of numerous high bills, she contacted both the Company and the Department for many months in order to pursue the problem (Exhs. Complainant-2; Complainant-3; Tr. at 10-15).

The Complainant stated that the Company sent a representative to conduct a test of her

meter on December 2, 1992 (Tr. at 13). The Complainant stated that she believed the Company's meter tester adjusted the meter during the test (id. at 13, 16-17, 28).

The Complainant also raised the concern that work being performed on a transformer near her home may have caused an increase in her electric bills (id. at 29). The Complainant, however, acknowledged that she could not show that the work would actually have caused any fluctuation in her bills (id. at 51).

The Complainant contended that when the Company finally replaced her meter on April 19, 1994, her electric bills immediately declined, from a high of 23 kilowatthours ("KWH") per day in 1993 to nine or ten KWH per day (Exh. Complainant-2; Tr. at 15). The Complainant stated that, since moving to a new apartment in December 1994 in Canton, her bills have remained very low (Exh. Company-1; Tr. at 15). She further noted that she is using virtually the same appliances in her new home (Tr. at 15).

The Complainant explained that, prior to installation of the new meter, she had calculated her average KWH per day usage to be as follows: 1991 -- 14 KWH per day; 1992 -- 23 KWH per day; 1993 -- 15 KWH per day; and, 1994 -- 17 KWH per day (Exh. Complainant-3). Following installation of the new meter, her average usage dropped to approximately 10 KWH per day for the period of April 19, 1994 to July 10, 1994 (id.). The Complainant argued, therefore, that her bills should be abated by \$766.80, the amount she believes she overpaid, based upon the following formula reflecting the number of KWH per day in excess of 10 KWH per day (id.).

1991	108 days x 4 KWH x 10 <sup>2</sup> cents =	\$43.20
1992	365 days x 13 KWH x 10 cents =	\$465.50
1993	365 days x 5 KWH x 10 cents =	\$182.50
1994	108 days x 7 KWH x 10 cents =	\$75.60
		<hr/> 766.80 Total

(id. at 2; Tr. at 22-26).

#### B. The Company

The Company's witness, Ms. Coughlan, stated that an actual read of the Complainant's meter was conducted every other month (Exh. Company-1; Tr. at 39-40). She also stated that there was no outstanding balance due on the account (Tr. at 40). Ms. Coughlan stated that on December 4, 1992, at the customer's request, a meter test was performed by the Company (Exh. Company-2; Tr. at 40-41). The results of the test indicated that the Complainant's meter was operating at 99.8 percent accuracy on a full load and at 100.2 percent accuracy on a light load (Exh. Company-2; Tr. at 41). Ms. Coughlan noted that, according to the Department's regulations relative to standard deviation of electric meters, a meter is considered accurate if it tests within two percent of 100 percent accurate either way (Tr. at 42). Ms. Coughlan went on to state that it was the Company's practice, after a meter test had been conducted, to calibrate the meter to make it read 100 percent accurate (id.).

Ms. Coughlan stated that on October 7, 1993, a second test was performed on the

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<sup>2</sup> Although the Complainant's letter to the Consumer Division setting forth the formula referenced \$1.00 per KWH, at the hearing, she agreed she had meant 10 cents per KWH (Tr. at 26).

Complainant's electric meter, this time by the Commonwealth of Massachusetts at the request of the Department (Exh. Company-3; Tr. at 43). This time, the meter tested 100.1 accurate on a full load and 100.0 percent accurate on a light load (Exh. Company-3; Tr. at 43). The meter was therefore operating accurately pursuant to Department standards, according to Ms. Coughlan (Tr. at 43).

Ms. Coughlan stated that, pursuant to a request by the Department's Consumer Division, the Company had inquired about work being done on the transformer connected to the Complainant's home and was told that no work had been done in 1994 (*id.* at 49). Ms. Coughlan added that, in her experience, she was not aware of any situation where work being done on the distribution system near a customer's home would affect the accuracy of the bills (*id.* at 52).

#### IV. STANDARD OF REVIEW

The Department has held consistently that, where a meter has been tested and found accurate, past actual readings are correct absent clear and convincing evidence to the contrary. Nelder v. Boston Edison Company, D.P.U. 91-AD-38 (1994); Chapman v. Eastern Edison Company, D.P.U. 262 (1981). In addition, the Department repeatedly has found that a mere discrepancy in use is insufficient to rebut the accuracy of a meter test. Nelder, *supra*; Barach v. Boston Edison Company, D.P.U. 91-AD-6 (1992); Brabazon v. Boston Gas Company, D.P.U. 85-AD-32 (1987). Moreover, actual readings from a meter tested and found to be accurate outweigh a customer's impression of use. Crossley v. Boston Gas Company, D.P.U. 576 (1983). The customer must meet a strict standard when faced with a meter tested and found accurate. The standard rests upon two basic premises: (1) scientific evidence supports the

certainty and reliability of tested meters; and (2) billing for utility consumption could not feasibly be based upon a customer's impression of his or her consumption. Mellen v. Boston Gas Company, D.P.U. 91-AD-8 (1994). Donovan v. Hingham Water Company, D.P.U. 758-B (1986).

## V. ANALYSIS AND FINDINGS

The issue to be decided is whether the Complainant has overcome the presumption of accuracy that arose from the fact that her meter was tested and found accurate on two separate occasions. The standard to be applied is whether the Complainant can show by clear and convincing evidence that the original meter was defective. D.P.U. 91-AD-38, at 5; D.P.U. 262, at 5. In this case, the Complainant offered two arguments in support of her position: (1) her impression of use; and (2) the fact that her electric bills declined following the installation of a new electrical meter at her residence. As to her first argument, the Department has consistently held that mere impression of use, standing alone, is not sufficient to overcome the results of meter tests showing that the meter is working accurately. D.P.U. 91-AD-8, at 5-6. Pursuant to G.L. c. 164, § 120, a meter is accurate if it tests within two percent above or below the standard measure. The meter readings show that the original meter tested within the limits on two separate occasions. Therefore, the Complainant has failed to overcome the results of the actual meter tests. As to the Complainant's second argument, the fact, standing alone, that her electric bills declined following installation of the new meter, does not defeat the presumption of accuracy associated with the original meter as a result of the two tests. In other words, something more is needed to make a causal connection between the removal of the old meter and the decrease in the

Complainant's electric bills. See D.P.U. 91-38, at 6. As such, in this case, the Complainant has not provided clear and convincing evidence that the original meter was defective. Id.

Therefore, based on the above, the Department finds that an abatement is not warranted because the Complainant has failed to prove that the bills rendered to her are inaccurate.

VI. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the bills rendered to Mary Miller between September 15, 1991 and April 19, 1994 were accurate and, therefore, Boston Edison Company is not obligated to refund any portion thereof.

By Order of the Department,

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Mary Clark Webster, Commissioner

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Janet Gail Besser, Commissioner



Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).